

Summary: The Defendant submitted an application requesting leave to proceed in forma pauperis in an appeal of an adverse order. The Court found that the order denying the Defendant's contempt of court motion is an interlocutory order which is not appealable until a final judgment has been entered. The Defendant's application to proceed in forma pauperis was denied as moot and the Court retained jurisdiction to enter an order of garnishment.

Case Name: USA v. Larry Young, et al.

Case Number: 1-07-mc-9

Docket Number: 57

Date Filed: 6/27/08

Nature of Suit:

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

United States of America,)	
)	
Plaintiff,)	ORDER DENYING DEFENDANT'S
)	MOTION TO PROCEED WITHOUT
vs.)	PREPAYMENT OF FEES
)	
Larry J. Young,)	Case No. 1:07-MC-09/1:90-CR-08
)	
Defendant,)	
)	
and)	
)	
Huey Long Company, Inc.,)	
)	
Garnishee.)	

The defendant, Larry Young, has submitted an application requesting leave to proceed in forma pauperis in an appeal of an adverse order in this action. See Docket No. 52. On May 6, 2008, Young filed a motion for contempt of court. See Docket No. 40. The Court denied Young's motion on June 9, 2008. See Docket No. 50. On June 13, 2008, Young filed a Notice of Appeal with the Eighth Circuit Court of Appeals as to the Court's order denying the contempt of court motion. See Docket No. 51.

At the garnishment hearing on June 16, 2008, the Court requested that the parties brief the issue of whether the Court has jurisdiction to rule on the disposition of the pending garnishment after Young filed the notice of appeal. On June 23, 2008, the Government submitted a brief in which it contends that this Court has jurisdiction to issue an order of garnishment despite Young's filing of a notice of appeal. See Docket No. 56. Young submitted a brief on June 23, 2008, in which he contends that he may appeal an order on a contempt of court motion because it is a final order. See Docket No. 55.

“As a general rule, the filing of a timely and sufficient notice of appeal operates to transfer jurisdiction of the case to the court of appeals, and after such filing the district court is without jurisdiction to proceed further in the case” Janousek v. Doyle, 313 F.2d 916, 920 (8th Cir. 1963). However, the courts of appeals only have jurisdiction of appeals from final decisions of the district courts. 28 U.S.C. § 1291. It is well-established that an order on a contempt of court motion is interlocutory and not immediately appealable unless the person held in contempt is not a party to the pending action. Coca-Cola Co. v. Purdy, 382 F.3d 774, 792 (8th Cir. 2004). Even if a party to the action endures contempt sanctions, the underlying contempt order generally is not open to review until a final judgment has been entered. In re Shalala, 996 F.2d 962, 964 (8th Cir. 1993). In this action, the Court did not find a party in contempt and Young has only appealed the Court's denial of the contempt of court motion.

The Court finds that the order denying Young's contempt of court motion is an interlocutory order which is not appealable until a final judgment has been entered. Young's application to proceed in forma pauperis (Docket No. 52) is **DENIED AS MOOT**. The Court retains jurisdiction to enter an order of garnishment.

IT IS SO ORDERED.

Dated this 27th day of June, 2008.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court